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David T. Read
Acting Director Health Assessment Policy Staff, CDER
Food and Drug Administration
1451 Rockville Pike, HFD-7
Rockville, MD 20852

JUL 23 2003

Dear Mr. Read:

The attached application for patent term extension (PTE) of U.S. Patent No. 5,962,468 was filed on May 29, 2003, under 35 U.S.C. § 156.

The assistance of your Office is requested in confirming that the product identified in the application, FACTIVE® (gemifloxacin mesylate), has been subject to a regulatory review period within the meaning of 35 U.S.C. § 156(g) before its first commercial marketing or use and that the application for patent term extension was filed within the sixty-day period after the product was approved. Since a determination has not been made whether the patent in question claims a product which has been subject to the Federal Food, Drug and Cosmetic Act, or a method of manufacturing or use of such a product, this communication is NOT to be considered as notice which may be made in the future pursuant to 35 U.S.C. § 156(d)(2)(A).

Our review of the application to date indicates that the subject patent would be eligible for extension of the patent term under 35 U.S.C. § 156.

Concurrent with the filing of the PTE application in the subject patent, the same applicant filed applications for PTE identifying the same product, FACTIVE®, in U.S. Patent Nos. 5,633,262 and 5,776,944.

Inquiries regarding this communication should be directed to the undersigned at (703) 306-3159 (telephone) or (703)872-9411 (facsimile).

Karin Ferriter

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Charles E. Van Horn
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
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